CWP Nos. 1741 & 1758 of 2007

28.11.2007 Present: Mr. Ajay Mohan Goel, counsel for the petitioners.

Mr. M.S.Chandel, Advocate General, with
Mr. R.M.Bisht, DAG, for the respondents.

Short replies have been filed.

The petitioners, in both these cases, are General Duty Officers (Doctors) employed with the State of H.P. They have applied for posts of Registrar in different subjects in Indira Gandhi Medical College and Hospital, Shimla and Dr. Rajinder Prashad Medical College & Hospital, Tanda. The stand of the State is that the petitioners are doctors serving in peripheral areas and, therefore, their services are required in those areas and they cannot be sent for undergoing Registrar-ship in the Colleges.

We are not going into the merits of the case because we are of the view that the petitions before this court are not maintainable.

The Apex Court in **L. Chandra Kumar Vs. Union of India and others (1997) 3 SCC 261** held as follows:-

> "93. x x x x x x x x x x. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. x x x x x x x x x.

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99. x x x x x x x. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

The Supreme Court laid down in no uncertain terms that the litigant, at the first instance, would have to approach the Administrative Tribunal. The only exception carved out by the Apex Court is where the challenge is to the legislation whereunder the Tribunal has been created. Any employee whose services are governed under the Administrative Tribunal's Act would have to approach the Administrative Tribunal.

Mr. Ajay Mohan Goel, learned counsel for the petitioners, has contended before us that the petitioners are not seeking jobs and are only applying for tenure posts as Registrars so as to gain teaching experience. Even accepting this argument of Mr. Goel, the posts of Registrars do not cease to be posts under the Government. The salary is paid by the Government. The duties are performed under the control of the officials of the Government and the posts of Registrars have all the trappings of civil posts. Therefore, in our opinion, the petitioners will first have to approach the State Administrative Tribunal.

Both the petitions are, therefore, rejected on this short ground with liberty reserved to the petitioners to approach the H.P. State Administrative Tribunal.

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( Deepak Gupta ), ACJ

November 28, 2007(K) ( V. K. Ahuja ), J.